

May 1, 2011

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Julius Genachowski
Federal Communications Commission
445 Twelfth Street Southwest
Washington, District of Columbia 20554-0005

via: Electronic Comment Filing System
in re: proceeding 11-65, AT&T and Deutsche Telekom

Dear Chairman Genachowski:

On March 20, AT&T announced its intent to acquire the domestic wireless assets and operations of Deutsche Telekom, which does business in the United States as T-Mobile. This announcement was made just shy of ten years to the anniversary of the Federal Communications Commission approving the Deutsche Telekom acquisition of VoiceStream, the predecessor to T-Mobile. While there were many concerns with regard to the Deutsche Telekom acquisition of VoiceStream, the Commission recognized that the transaction had significant “public interest benefits for [American] consumers.” The Commission recognized that this was an overriding concern in 2001, and it is just as critical a concern today. This proposed acquisition simply has no net positive benefits for consumers, and for that reason alone, the proposed transfer of control of licenses and authorizations should not be approved.

This transaction now before the Commission would not only reverse an entire decade of competitive progress in the wireless industry in this country, but it would inarguably lead to a plodding near-duopoly in the wireless market — a market that would be overwhelmingly dominated by two legacy landline telecommunications companies that have often been aloof to consumer interests and unresponsive to technological innovation.

Indeed, while T-Mobile faced intense challenges over the past ten years in building out a national coverage footprint, their presence in the market has undoubtedly had a profoundly positive impact for consumers. From affordability to innovation, T-Mobile has often led both AT&T and Verizon in introducing new plans, competitive pricing, and advanced features — often exclusively. T-Mobile did not have exclusive access to the deep coffers of a landline monopoly to fuel its network expansion. Verizon Wireless and AT&T Mobility have both nearly doubled their subscriber base in recent years through access to seemingly limitless capital and debt, allowing both to purloin customers and assets that would not otherwise have chosen their brands. On the other hand, T-Mobile in the United States made only one major acquisition over the past ten years, of a regional carrier with approximately a million subscribers. Its growth has been organic, fueled by customers who sought refuge from the two largest carriers and their price gouging, backwards policies, and anti-competitive practices.

T-Mobile has, by no means, been a perfect company. Likewise, they have not always been the only wireless carrier to benefit consumer interests and support technological innovation. T-Mobile and Cingular were strong proponents of mobile data devices and services. T-Mobile, Cingular, and Nextel were each early supporters of Research In Motion BlackBerry devices and services. T-Mobile and Alltel were among the first to introduce plans that allowed

consumers to make unlimited calls to a specific group of numbers, making wireless services more practical for a wide range of consumers and businesses.

In the United States, only T-Mobile and Cincinnati Bell have adopted Unlicensed Mobile Access technology, commonly known as UMA. This technology has numerous benefits for consumers, chiefly allowing any subscriber with a compatible BlackBerry handset to make and receive calls via Wi-Fi. This can improve indoor coverage anywhere in the United States, and allow international travellers to stay in touch with their families and colleagues without facing outrageous roaming charges. Instead of an open approach, both Verizon Wireless and AT&T Mobility have chosen to adopt proprietary femtocell technologies that prohibit subscribers from using the devices outside of the United States, and, indeed, even in many rural areas in the United States. In the case of AT&T, in particular, allowing its subscribers to utilize UMA services would require a minimal investment in supporting network infrastructure, and countless BlackBerry devices already in use on its network could be updated to support the service. Consumers would gain the ability to have access to more reliable service in their homes, offices, and abroad. Certainly, AT&T would lose some revenue from their exorbitant international roaming charges. To benefit consumers and compete with Verizon and AT&T, T-Mobile adopted this technology. Undoubtedly, in a market where AT&T and Verizon had a near-duopoly, American consumers would likely never see many technological advancements such as UMA.

There is no doubt that the wireless industry in the United States has many brands, but to call each and every of these brands “competitors” is disingenuous. AT&T and Verizon — through the approval of past mergers and acquisitions — have been allowed to assemble vast spheres of influence that essentially limit consumer choice. If you want seamless and convenient global roaming, your options today are primarily AT&T or T-Mobile, owing to their adoption of the Global System for Mobile Communications standard, commonly GSM. Allowing AT&T to subsume T-Mobile would substantially limit choice for millions of consumers, for years to come, to either AT&T or a small subsection of devices from Verizon. To understand the impact this would have on consumers, simply look at the cost of using a BlackBerry for staying in touch via email while roaming in Europe. With Verizon, up to 70 megabytes will cost you at least \$130. With AT&T, up to 100 megabytes will be at least \$150 for most consumers. With T-Mobile, unlimited email access would be \$50. In recent years, as Verizon and AT&T have (already) significantly reduced wireless competition through a series of mergers and acquisitions, both have eliminated similar unlimited international email plans that they once offered. No doubt, following any acquisition of T-Mobile, AT&T would be expected to do the same for the remaining affordable T-Mobile plan.

There are smaller regional and prepaid options, but for many consumers these options are simply not feasible. All offer far more limited domestic coverage than the four larger national carriers. Any significant amount of roaming — if available at all — usually leads to significantly greater costs, or the termination of service altogether. International roaming is often very limited — again, if available at all. Device selection is usually considerably poorer than with the two largest national carriers, due in part to the specialized radios required for the frequencies these carriers must use (a problem not unknown to T-Mobile, as a matter of fact). And the spheres of influence that AT&T and Verizon enjoy mean many families and businesses depend on proprietary free “mobile to mobile” minutes to keep their wireless bills from skyrocketing. Likewise, AT&T and Verizon have negotiated exclusive contracts with countless employers that further cement their stranglehold on the wireless subscriber base they have cobbled together through past mergers and acquisitions.

The “free market” principle — in this case, that AT&T should be allowed to acquire the domestic T-Mobile operations, assets, and licenses if, and solely if, it and Deutsche Telekom are able to agree on terms — is ironic, but irrelevant. AT&T was not created in, does not exist in, and does not benefit from a free market. For well more than

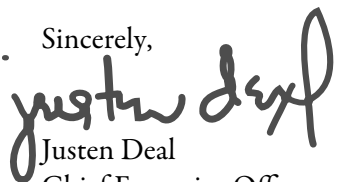
a century, AT&T and Verizon and their predecessor companies have benefited immensely from their monopoly positions (first nationally and later regionally). Both AT&T and Verizon, and their predecessor companies, have utilized the capital generated from their respective monopolies to build and acquire wireless licenses, networks, and subscribers. Today, in fact, both together hold the vast majority of the original wireless licenses intended to promote wireless competition from non-landline wireless companies. Both AT&T and Verizon have used the significant cash flow generated from their respective landline monopolies to acquire competitive wireless operations that have allowed both to cobble together subscriber bases that are nearing twice as large as their two nearest competitors, Sprint and T-Mobile. Both have used their vast domestic monopoly infrastructure to accelerate their wireless network expansion, while both T-Mobile and Sprint have been forced to build their networks without the enjoyment of those monopoly benefits.

The Federal Communications Commission exists to ensure its actions protect the public interest, convenience, and necessity. Approving the transfer of control for the T-Mobile licenses and authorizations to AT&T will most certainly not serve the public interest, convenience, or necessity. It may certainly benefit Deutsche Telekom and AT&T shareholders, but consumers will face dramatically reduced competition and innovation in the wireless industry will suffer. AT&T faces no greater impending spectrum shortage than do Verizon, Sprint, or T-Mobile. Instead, most industry analysts point to a lack of adequate reinvestment in its network and backhaul infrastructure as its greatest capacity constraint. Subjecting an even larger number of consumers to its mismanagement does not benefit public interest and further reduces competition in an industry vitally important to our economy and our future.

Allowing the transfer of these licenses and authorizations — allowing this acquisition — would cause irreparable damage to the public interest. It would reduce competition, chill innovation, and place consumers in countless wireless markets across this country between a rock and a hard place. A decision to approve and cement a near-duopoly for the wireless industry in the United States will haunt the Commission and consumers for years to come, no matter what token “conditions” are imposed upon one of the resulting entities. American consumers need — and deserve — better than having to choose between the lesser of two evils when it comes to their wireless service.

For these reasons, I urge the Commission to reject the application before it to transfer control of the T-Mobile licenses and authorizations to AT&T. Should you have any questions, you may reach me by voice at 504 264-9355, by email at justen@vieuhealth.com, via facsimile at 504 264-9376, or by mail at the address listed above.

Sincerely,


Justen Deal
Chief Executive Officer
Vieu Health Corporation